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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,247	12/01/2003	Alan C. Colliander	54902-0015	1246
29052	7590	11/23/2004	EXAMINER	
SUTHERLAND ASBILL & BRENNAN LLP 999 PEACHTREE STREET, N.E. ATLANTA, GA 30309			FERGUSON, MICHAEL P	
			ART UNIT	PAPER NUMBER
			3679	

DATE MAILED: 11/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/707,247	COLLIANDER, ALAN C.	
	Examiner	Art Unit	
	Michael P. Ferguson	3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 11,13,16-19 and 21-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10,12,14,15 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/01/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of species 1, Figures 1-4, claims 1-10, 12, 14, 15 and 20, in the reply filed on November 10, 2004 is acknowledged.
2. Claims 11, 13, 16-19 and 21-25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on November 10, 2004.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 10, 12, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Abbott et al. (US 4,950,098).

As to claim 1, Abbott et al. disclose a fence slat **100** comprising:

a longitudinal body;

the longitudinal body comprising a first side and a second side;

a first sidewall **A** (Figure 12 reprinted below with annotations) positioned on the first side of the longitudinal body; and

a second sidewall **B** positioned on the second side of the longitudinal body;

the first and the second sidewalls comprising a locking portion **94** positioned thereon (Figures 7-10 and 12).

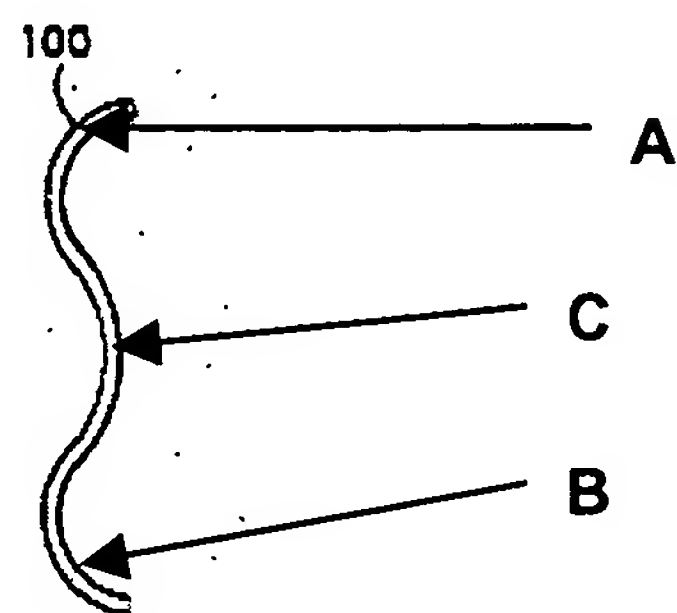


FIG. 12

As to claim 2, Abbott et al. disclose a fence slat **100** wherein the first side wall **A** comprises a first curved sidewall and wherein the second sidewall **B** comprises a second curved sidewall (Figure 12).

As to claim 3, Abbott et al. disclose a fence slat **100** wherein the longitudinal body comprises a rib **C** positioned therein (Figure 12).

As to claim 4, Abbott et al. disclose a fence slat **100** wherein the rib **C** comprises the locking portion **94** positioned thereon (Figures 10 and 12).

As to claim 10, Abbott et al. disclose a fence slat **100** wherein the locking portion **94** comprises a substantial harpoon shape (Figure 10).

As to claim 12, Abbott et al. disclose a fence slat **100** wherein the locking portion **94** comprises a cutout portion **94** and an elevated portion **93** (Figure 10).

As to claim 14, Abbott et al. disclose a fence slat **100** comprising a second locking portion (not shown; at other end of longitudinal body).

As to claim 15, Abbott et al. disclose a fence slat **100** wherein the first **A** and the second **B** curved sidewalls comprise a curve towards the longitudinal body (Figure 12).

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5. Claims 1-3, 5-10, 12, 14, 15 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Cluff (US 5,165,664).

As to claim 1, Cluff discloses a fence slat **19** comprising:

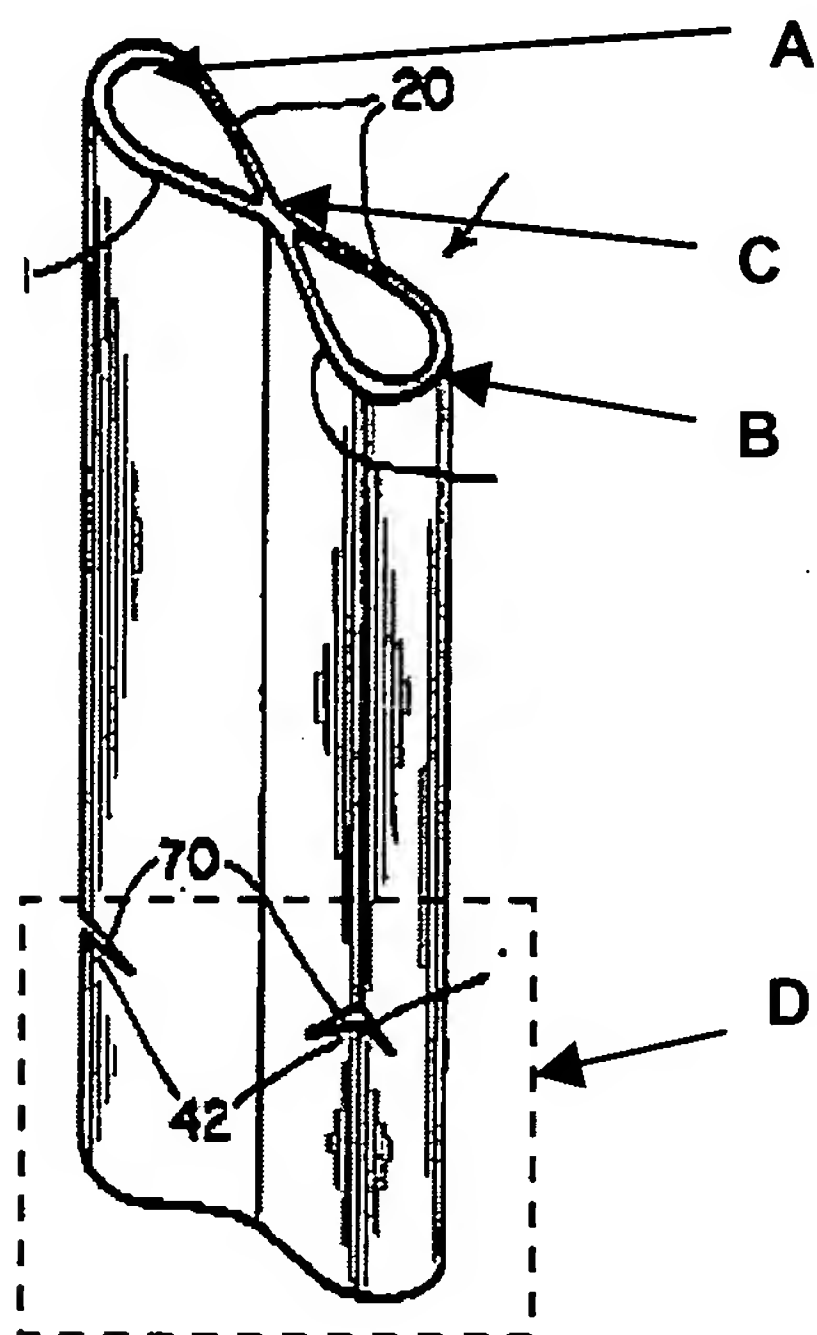
a longitudinal body;

the longitudinal body comprising a first side and a second side;

a first sidewall **A** (Figure 8 reprinted below with annotations) positioned on the first side of the longitudinal body; and

a second sidewall **B** positioned on the second side of the longitudinal body;

the first and the second sidewalls comprising a locking portion **70** positioned thereon (Figures 1 and 8).



As to claim 2, Cluff discloses a fence slat **19** wherein the first side wall **A** comprises a first curved sidewall and wherein the second sidewall **B** comprises a second curved sidewall (Figure 8).

As to claim 3, Cluff discloses a fence slat **19** wherein the longitudinal body comprises a rib **C** positioned therein (Figure 8).

As to claim 5, Cluff discloses a fence slat **19** wherein the longitudinal body comprises a tube (Figure 8).

As to claim 6, Cluff discloses a fence slat **19** wherein the tube comprises a substantially flat first side and a substantially flat second side (Figure 8).

As to claim 7, Cluff discloses a fence slat **19** wherein the tube comprises a rib **C** separating the substantially flat first side and the substantially flat second side (Figure 8).

As to claim 7, Cluff discloses a fence slat **19** wherein the tube comprises a first end and a second end and wherein the first end comprises the locking portion **70** (Figure 8).

As to claim 9, Cluff discloses a fence slat **19** wherein the substantially flat first side comprises a terminating point adjacent to the first end.

As to claim 10, Cluff discloses a fence slat **19** wherein the locking portion **70** comprises a substantial harpoon shape (Figure 8).

As to claim 12, Cluff discloses a fence slat **19** wherein the locking portion **70** comprises a cutout **70** portion and an elevated portion **42** (Figure 8).

As to claim 14, Cluff discloses a fence slat **19** comprising a second locking portion (not shown; other end of longitudinal body).

As to claim 15, Cluff discloses a fence slat wherein the first **A** and the second **B** curved sidewalls comprise a curve towards the longitudinal body (Figure 8).

As to claim 20, Cluff discloses a fence slat **19** comprising:
a longitudinal body;
the longitudinal body comprising a first wall and a second wall;
a pair of sidewalls **A,B** connecting the first wall and the second wall;
a rib **C** connecting the first wall and the second wall; and
the pair of sidewalls and the rib comprising a locking portion **D** (portion **D** of the longitudinal body comprises a locking portion) positioned thereon (Figures 1 and 8).

Conclusion

The prior art made of record and not relied upon is considered pertinent to the applicant's disclosure. The following patent shows the state of the art with respect to fence slats:

Forbis (US 5,988,599) is cited for pertaining to fence slats comprising a longitudinal body having a first and second side, first and second sidewall, and a locking portion.

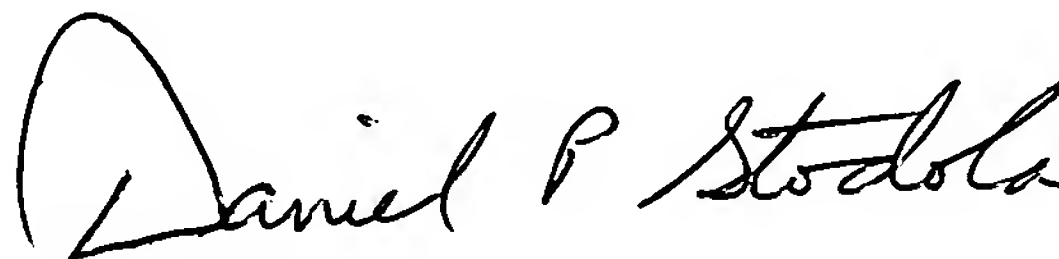
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P. Ferguson whose telephone number is (703)308-8591. The examiner can normally be reached on M-F (7:30-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


MPF
11/18/04



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